

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 98-4687

EDISON ARTHUR STURGESS, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of North Carolina, at Durham.
Frank W. Bullock, Jr., Chief District Judge.
(CR-98-78)

Submitted: March 30, 1999

Decided: June 14, 1999

Before NIEMEYER and TRAXLER, Circuit Judges, and
BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Louis C. Allen, III, Federal Public Defender, William C. Ingram, First
Assistant Federal Public Defender, Greensboro, North Carolina, for
Appellant. Walter C. Holton, Jr., United States Attorney, Robert A.
J. Lang, Assistant United States Attorney, Winston-Salem, North Car-
olina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Edison Sturgess, Jr. appeals from a district court judgment order entered pursuant to his guilty plea to drug trafficking offenses. Sturgess contends that the district court erred by failing to grant his request for a downward departure at sentencing based on substantial assistance to the government, despite the absence of a government motion for departure. See U.S. Sentencing Guidelines Manual, § 5K1.1 (1994). Sturgess concedes that the district court's action comports with prior Fourth Circuit precedent, but asks this Court to overrule such precedent, and hold that, in light of the Supreme Court's decision in Koon v. United States, 518 U.S. 81 (1996), departures under § 5K1.1 are not dependent on the filing of a government motion.

We have held, subsequent to Koon, that a downward departure based on substantial assistance requires a government motion. See United States v. Schaefer, 120 F.3d 505, 508 (4th Cir. 1997). Moreover, one panel of this court cannot overrule the decision of another panel. See Jones v. Angelone, 94 F.3d 900, 905 (4th Cir. 1996). Accordingly, we decline Sturgess' invitation to overrule our own precedent, and affirm the judgment order of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED